IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9811 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

UMEDSINH TAKHATSINH RANA

Appearance:

1. Special Civil Application No. 9811 of 1994

MR PRANAV G. DESAI for Petitioner No. 1

NOTICE NOT RECD BACK for Petitioner No. 1

MR DM THAKKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/05/2005

ORAL JUDGEMENT

#. In this petition under Article 227 of the

Constitution of India, the petitioner, Gujarat State Road Transport Corporation has prayed for quashing and setting aside the award and order passed by the Labour Court, Rajkot in Reference (LCR) No.1447/86 dated 01.01.1994, by which the Labour Court, Rajkot has declared the dismissal order of the respondent - workmen as illegal and excessive and, therefore, set aside the same and also directed to pay 50% back wages from 31.8.1982 to 29.3.1989 and as the respondent died during the pendency of the proceedings, the question of reinstatement does not arise. Costs of Rs.500/- was also awarded to the legal heirs of the respondent.

#. The brief facts of the petitioner's case are such that the respondent was working in the petitioner Corporation in Surendranagar depot and as he was transferred to Jam Khambalia depot, he was relieved from Surendranagar depot on 31.8.79. That after he was relieved from Surendranagar depot, he did not report on duty at Jam Khambalia depot for more than 2 months. He was also asked to present himself for duty at Morbi depot on 08.09.1981. The respondent was issued a chargesheet on 12.11.1981 but he did not submit any reply to the same. Therefore, departmental inquiry was ordered wherein also the respondent did not participate and ultimately, ex-parte enquiry was conducted and show cause notice dated 27.7.1982 was issued to the respondent, inter alia stating that as the charges levelled against him are proved, it was proposed in the said notice as to why the punishment of dismissal with immediate effect should not be imposed against him and the respondent was called upon to submit his explanation against the aforesaid proposed punishment. Ultimately, by an order dated 31.8.1982, the respondent was dismissed from service.

#. Being aggrieved and dissatisfied with the aforesaid dismissal order passed by the disciplinary authority of the petitioner Corporation, respondent raised industrial dispute before the Asst.Commissioner of Labour Rajkot but as the conciliation proceedings ended in failure, the Asst. Labour Commissioner, Rajkot by order dated 30.6.1986 referred the same to the Labour Court, Rajkot under Section 10(1)(c) of the Industrial Disputes Act, 1947 which was registered as Reference (LCR) No. 1447/86 before the Labour Court, Rajkot. The respondent workman died during the pendency of the proceedings on 19.3.1989 and therefore his legal heirs were brought on record. After considering the facts and circumstances of the case, the Labour Court, Rajkot was pleased to allow the reference and pass the order as stated above, against

which the present petition is filed.

#. It is submitted by the learned advocate appearing on behalf of the petitioner - Corporation that since the reference was not maintainable in law before the Labour Court, the Labour Court has committed serious error in entertaining the said reference. It is submitted that the reference before the Labour Court was barred by delay and laches. It is further submitted that the respondent workman has not availed the alternative remedy by way of appeal before the authority under the Industrial Disputes Act. It is further submitted that the Labour Court has erred in holding that if 50% back wages of the period from 31.8.82 till 29.3.89 are awarded to heirs of the respondent workman, it would meet the ends of justice and further erred by awarding Rs.500/- towards costs, and therefore requested to allow the present petition. He has relied on the decision reported in 1999(1) GLH 527.

#. This Court (Coram : S.K.Keshote,J) passed the following order on 6.3.95 :

"Admit. The operation of the award dated 1.1.1994 passed in Reference (LCR) No. 1447 of 1986 by the Presiding Officer, Labour Court, Rajkot, is stayed until further orders."

#. Mr.D.M.Thakkar, learned advocate appears on behalf of respondent workman and submitted that the order of the Labour Court is just and proper. He submitted that since the order passed by the petitioner Corporation is illegal and excessive, the Labour Court has rightly quashed and set aside the order passed by the petitioner Corporation dismissing the respondent workman from service on 31.8.1982 and therefore requested not to interfere with the order passed by the Labour Court.

#. Heard the learned counsel for the parties.

#. It is not in dispute that the respondent workman was serving with the petitioner Corporation at Surendranagar depot and he came to be transferred to Jam Khambaliya depot and was relieved from Surendranager depot on 31.8.1979. It is also not in dispute that respondent workman was issued the charge sheet on 12.11.1981 and also the show cause notice dated 27.7.1982 was issued to the respondent workman stating as to why the punishment of dismissal should not be imposed against the respondent workman with immediate effect and ultimately by order dated 31.8.1982, the respondent workman came to be dismissed from service by the petitioner corporation.

The respondent workman raised industrial dispute which was referred to the Labour Court, Rajkot under Section 10(1)(c) of the Industrial Disputes Act. The said reference was numbered as Reference (LCR) No. 1447 of 1986, wherein the respondent workman filed the statement of claim at Exh. 5 inter alia contending that the petitioner corporation has falsely issued the charge sheet to the effect that the respondent workman was remaining absent from duty in Jam Khambaliya depot after he being transferred from Surendranagar depot to Morbi depot. The petitioner corporation also filed its written statement at Exh. 8 and contended that the reference is barred by delay and laches. It is the case of the petitioner corporation that the respondent workman did not obey the order of transfer intentionally and has not reported for duty at the place where he was transferred and without any prior permission, he remained absent unauthorisedly upto 12.11.1981. It is required to be noted that unfortunately the respondent workman died during the pendency of the reference i.e. 19.3.89. It appears from the record that he was suffering from T.B. and he remained absent from duty without leave due to the said disease and in the meantime, his baby expired and under these circumstances, the workman remained absent from duty at Jam Khambaliya depot. It is true that the respondent workman should have sent his leave report to the respondent workman but the respondent workman could not submit the report in view of the aforesaid circumstances. In the aforesaid facts and circumstances of the case, I am of the considered opinion that the Labour Court has not committed any error which require interference of this Court exercising the power under Article 227 of the Constitution of India. No error much less, the jurisdictional error has been committed by the Labour Court while passing the impugned order.

#. For the reasons stated above, there is no substance in this petition and the same is required to be dismissed and is dismissed accordingly. Interim relief stands vacated forthwith. The petitioner Corporation is directed to pay 50% back wages from 31.8.1982 to 29.3.1989 to the legal heirs of the deceased workman within a period of two months from the date of receipt of the writ of this order.

(Sharad D.Dave,J)

srilatha